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JUN. 15. 2009 12:58PM HARRINGTON & SMITH

NO. 705 P. 10

Appl. No.: 10/572,710
Reply to Office Action of: 04/14/2009

REMARKS

Claims 1-9, 11, and 13-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kaplan (US 6,690,358). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kaplan (US 6,690,358) in view of Kalinski et al. (US 2003/0174307). The examiner is requested to reconsider these rejections.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Applicants have amended claim 1 to recite, *inter alia*, "wherein the display has a first area and the bar has a second area, the second area being smaller than the first area". This amendment is supported by, for example, figures 4A, 4B and 4C.

In response to applicants' previous argument that, "It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable", the Examiner appears to have interpreted "bar" as a display panel. The Examiner then continues to allege that this movement would be constrained to this "bar".

Embodiments of the present invention relate to a mobile cellular telephone 10 which includes an incline sensor 16 that is arranged to detect the inclination of the mobile telephone 10. The mobile telephone 10 also includes a processor 12, which is arranged to receive signals from the incline sensor

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16. When the mobile telephone 10 is placed in an inclinometer mode (i.e. a mode where the telephone acts as an instrument for enabling a user to measure the inclination of the mobile telephone) the processor 12 receives signals from the incline sensor 16 and controls a display 14 to display an item whose position is dependent upon the inclination measured by the incline sensor 16. As mentioned on page 4, lines 9 to 13 the mobile telephone can emulate a spirit level and thereby enable a user to measure the inclination of a surface (please see page 5, lines 15 to 34).

In contrast, Kaplan relates to cursor control in a display of a hand-held device (column 1, lines 1 to 2). Kaplan discloses a special orientation sensor within a device which provides for movement of a screen cursor in response to changes in the spatial orientation of the device (abstract).

Kaplan specifically discloses a portable digital assistant (PDA) 100 that includes a screen 110, activation buttons 12, 13, 14 and accelerometers 10, 11. The screen 110 may display a cursor 120 and pushing one or more of the buttons 12, 13, 14 may enable movement of the cursor 120 about the screen 110. The accelerometers 10, 11 provide an output signal that is related to the angle of the accelerometers' major axis away from a horizontal plane when the PDA is in a "neutral position". The output signal of the accelerometer 10, 11 is received and processed by the processor 17 which may control the screen 110 accordingly.

The "neutral position" is described in Kaplan at column 2, lines 46 to 55 as "when PDA 100 is held in a position that is

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tilted upwards to facilitate viewing of screen 100, say 30 degrees above the horizon".

If button 13 is pushed, the cursor 120 becomes responsive to the orientation of the PDA 100. As mentioned on column 4, lines 5 to 19, the relationship for the movement of the cursor 120 in response to tilting the PDA 100 may be one in which the cursor acts like an air bubble in a carpenter's level.

If button 14 is pressed, the processor 17 may use the accelerometer 10, 11 output signal to control the panning of an image displayed on the screen 110 (as opposed to controlling the cursor).

Kaplan does not disclose "wherein the display has a first area and the bar has a second area, the second area being smaller than the first area" as recited by independent claim 1. There is no disclosure whatsoever in Kaplan of a bar with an area smaller than the display area.

Kaplan also does not disclose an "inclinometer mode" which provides an indication to a user of the incline of a mobile phone. There is no disclosure whatsoever in Kaplan of an inclinometer mode.

As Kaplan does not disclose a bar with an area smaller than that of the display, nor does it disclose an inclinometer mode, embodiments of the present invention are novel over Kaplan.

Additionally, applicants respectfully submit that it is incomprehensible why a skilled person in the art would look to Kaplan to emulate a spirit level for indicating incline when

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Kaplan clearly teaches away from indicating incline of a device.

In Kaplan, there is no disclosure whatsoever of a bar displayed by the display, having an area smaller than the display. Therefore, in embodiments of the present invention, it is clear that the movement of the item may be restricted to being within the bar within the display and with an area smaller than that of the display. It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable. In particular, the cursor would be prevented from accessing and selecting items which are positioned outside of the bar.

Furthermore, Kaplan discloses a "neutral position" of a PDA at a predetermined angle of 30 degrees above horizon (column 2, line 46 to column 3, line 10). The neutral position is disclosed as being the position at which a zero force signal is present due to each accelerometer axis being orthogonal to the Earth's gravitational force. The cursor is therefore stationary when the PDA is held to facilitate viewing of the PDA screen. Therefore Kaplan clearly relates to enabling user-friendly cursor positioning and control on a PDA display and therefore teaches away from measuring an incline. Contrastingly, embodiments of the present invention allow a mobile phone display to be used to measure or correct an incline of a plane surface (i.e. with respect to a horizontal plane) that supports the mobile telephone (page 5, lines 9 to 13) when in an inclinometer mode.

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Kaplan therefore also teaches away from emulating a spirit level. A spirit level has a bubble which is centred in a bar when the bar is horizontal. Since Kaplan only centres the cursor at a 30 degree angle from a horizontal plane, the PDA of Kaplan cannot emulate a spirit level. It is therefore clear that Kaplan merely discusses a spirit level as an analogy to help illustrate the movement of a cursor with respect to the movement of the PDA (away from a plane that is at 30 degrees from horizontal).

Additionally, it would not be obvious to a person skilled in the art to adapt Kaplan to include an inclinometer mode, since Kaplan is only concerned with the control of a cursor. Kaplan is not concerned with adding new functional modes to a hand held device.

In the present case, there is no teaching, suggestion, or motivation, found in either the reference itself or in the knowledge generally available to one of ordinary skill in the art, to provide a mobile cellular telephone comprising ... a processor configured to ... control the display to display, to a user of the mobile cellular telephone, a bar and an item, at a position within the bar dependent upon the received indication, the position of the item within the bar representative of the sense and amount of inclination of the mobile cellular telephone in the first plane, wherein the display has a first area and the bar has a second area, the second area being smaller than the first area, as claimed in amended claim 1. The features of claim 1 are not disclosed or suggested in the art of record. Therefore, claim 1 is patentable and should be allowed.

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Though dependent claims 2-10, 13, 14, and 24 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 1. However, to expedite prosecution at this time, no further comment will be made.

Applicants have amended claim 11 to recite, *inter alia*, "wherein the display has a first area and the first bar has a second area, the second area being smaller than the first area". This amendment is supported by, for example, figures 4A, 4B and 4C.

Similar to the arguments presented above with respect to claim 1, there is no disclosure whatsoever in Kaplan of a bar with an area smaller than the display area, there is no disclosure whatsoever in Kaplan of an inclinometer mode, and Kaplan clearly teaches away from indicating incline of a device. Kaplan clearly relates to enabling user-friendly cursor positioning and control on a PDA display and therefore teaches away from measuring an incline. Additionally, it would not be obvious to a person skilled in the art to adapt Kaplan to include an inclinometer mode, since Kaplan is only concerned with the control of a cursor. The features of claim 11 are not disclosed or suggested in the art of record. Therefore, claim 11 is patentable and should be allowed.

Applicants have amended claim 15 to recite, *inter alia*, "wherein the display has a first area and the bar has a second area, the second area being smaller than the first area". This amendment is supported by, for example, figures 4A, 4B and 4C.

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Similar to the arguments presented above with respect to claim 1, there is no disclosure whatsoever in Kaplan of a bar with an area smaller than the display area, there is no disclosure whatsoever in Kaplan of an inclinometer mode, and Kaplan clearly teaches away from indicating incline of a device. Kaplan clearly relates to enabling user-friendly cursor positioning and control on a PDA display and therefore teaches away from measuring an incline. Additionally, it would not be obvious to a person skilled in the art to adapt Kaplan to include an inclinometer mode, since Kaplan is only concerned with the control of a cursor. The features of claim 15 are not disclosed or suggested in the art of record. Therefore, claim 15 is patentable and should be allowed.

Though dependent claims 16-23 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 15. However, to expedite prosecution at this time, no further comment will be made.

Applicants have amended claim 25 to recite, *inter alia*, "wherein the display has a first area and the bar has a second area, the second area being smaller than the first area". This amendment is supported by, for example, figures 4A, 4B and 4C.

Similar to the arguments presented above with respect to claim 1, there is no disclosure whatsoever in Kaplan of a bar with an area smaller than the display area, there is no disclosure whatsoever in Kaplan of an inclinometer mode, and Kaplan clearly teaches away from indicating incline of a device.

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Kaplan clearly relates to enabling user-friendly cursor positioning and control on a PDA display and therefore teaches away from measuring an incline. Additionally, it would not be obvious to a person skilled in the art to adapt Kaplan to include an inclinometer mode, since Kaplan is only concerned with the control of a cursor. The features of claim 25 are not disclosed or suggested in the art of record. Therefore, claim 25 is patentable and should be allowed.

Applicants have amended claim 26 to recite, *inter alia*, "wherein the display has a first area and the bar has a second area, the second area being smaller than the first area". This amendment is supported by, for example, figures 4A, 4B and 4C.

The examiner listed claims 1-11, and 13-26 as rejected in the "Office Action Summary". The examiner also listed the above mentioned claims as rejected in the "Detailed Action" (Office Action pages 2-8). The examiner provided specific rejections for claims 1-11 and 13-26. However, the examiner did not provide a specific rejection for independent claim 26 in the "Detailed Action". Therefore, it is believed that claim 26 is patentable and should be allowed.

In the event that the examiner intended to reject claim 26 under 35 U.S.C. §103(a) as being unpatentable over Kaplan (US 6,690,358):

Similar to the arguments presented above with respect to claim 1, there is no disclosure whatsoever in Kaplan of a bar with an area smaller than the display area, there is no disclosure whatsoever in Kaplan of an inclinometer mode, and Kaplan

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clearly teaches away from indicating incline of a device. Kaplan clearly relates to enabling user-friendly cursor positioning and control on a PDA display and therefore teaches away from measuring an incline. Additionally, it would not be obvious to a person skilled in the art to adapt Kaplan to include an inclinometer mode, since Kaplan is only concerned with the control of a cursor. The features of claim 26 are not disclosed or suggested in the art of record. Therefore, claim 26 is patentable and should be allowed.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. If there are any additional charges with respect to this Amendment or otherwise, please charge deposit account 50-1924 for any fee deficiency. Should any unresolved issue remain, the examiner is invited to call applicants' attorney at the telephone number indicated below.

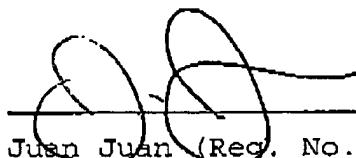
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Respectfully submitted,



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6/12/2009

Date

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